(4)

C.S.402/ — 4

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.3495 /2005

PETITIONERS

1. M. Prabhakar Rao S/o late Shri M.L.Rao aged about 32 R/o C/o S.C. Dubey, near water tank, Indira Colony Tarbhar Bilaspur, District Bilaspur C.G.

2. M.Arjun Kumar S/o late Shri M.L.Rao aged about 37 R/o Shivaji Nagar, Raipur, Distt. Raipur, C.G.

3537/05
P.R.No.....
Presented by Shri. O.P.Sharma
dated 25/7/05

VERSUS

RESPONDENTS

1. State of Chhattisgarh through Collector Bilaspur C.G.

2. S.R.P. Kalluri I.P.S. Superintendent of Police Bilaspur, at present posted at Balrampur, District Balrampur C.G.

3. S.H.O. Mahila Thana, Bilaspur District Bilaspur C.G.

3.A S.H.O City Kotwali Bilaspur, District Bilaspur C.G.

4. Divisional Education Officer, (tribal), office situated at Nehru Chowk Bilaspur C.G.

5. Dr. B.R.Nanda (R.M.O.), posted at CIMS Bilaspur as Medical officer. District Bilaspur C.G.

6. Dr. D.R.Patle posted at SIMS Bilaspur as Medical officer. District Bilaspur C.G.

7. Dr. N.S. Chandel posted at SIMS Bilaspur as Medical officer. District Bilaspur C.G.

8. Dr. Yogita Haripriya posted at SIMS Bilaspur as Medical officer. District Bilaspur C.G.

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अपर आयुक्त,
बिलासपुर संभाग

9. Dr. S. Chatterjee posted at SIMS Bilaspur as Medical officer. District Bilaspur C.G.

10. Mrs Rachana Rao W/o M. Prabhakar Rao, D/o T.J.R Naidu, aged about 30 years, R/o Church road Gandhi Nagar, behind Balram Talkies, Bilaspur, C.G.

11. Dr. T.J.R. Naidu,(Retd. Vetenary Doctor) aged about 67 years, R/o Church road Gandhi Nagar, behind Balram Talkies, Bilaspur, C.G.

12. Abhishek Naidu S/o Dr. T.R.J. Naidu aged about 30 years, R/o Church road Gandhi Nagar, behind Balram Talkies, Bilaspur, C.G.

13. Smt. Shashikala Naidu W/o Dr. T.R.J. Naidu aged about 62 years, R/o Church road Gandhi Nagar, behind Balram Talkies, Bilaspur, C.G.

14. Principal, Govt. Boys Higher Secondary School , Belghana District Bilaspur, C.G.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(1471)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 3445/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	31.8.2005 Shri Abhijeet Sarkar, counsel for the petitioner. Shri Sandeep Dubey, Govt. Adv. for the State. Heard. The petitioners have preferred this writ petition under Article 226/227 of the Constitution of India for issuance of writ of certiorari for quashing the Criminal Case No.388/04 pending before the Judicial Magistrate First Class, Bilaspur; for initiation of investigation regarding authenticity of matter in the certificates issued by the District Medical Board, Bilaspur; for initiation of appropriate legal action against respondent Nos.5 to 9 herein and to direct the Investigating Agency to register appropriate offence against respondent Nos.10 to 13 herein regarding their malicious, illicit act and behaviour. The case, as set out in the petition, of the petitioner is that respondent No.10-Smt.Rachna Rao was married to petitioner No.1 herein on 22.5.2002 with the consent of both the families according to Hindu rites and after marriage petitioner No.1 & respondent No.10 enjoyed their married life around about five months. Respondent No.10 is a Senior Lecturer at Boys Higher Secondary School, Belgahna and drawing a salary of Rs.10,000/- per month and Petitioner No.1 earns Rs.15,000/- per month. Since the father of respondent No.10 is residing at Bilaspur, therefore, she often use to leave for her father's residence and there respondent No.11 to 13 herein used to provoke	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

her and pressurize her to force petitioner No.1 to leave his home and start leaving at her parents house at Gandhi Nagar, Bilaspur. When the petitioner refused to do so, respondent No.10 to 13 threatened the petitioner that they will implicate the petitioners in a false case and on the event the petitioner No.1 would loose his social image gained as reputed teacher and petitioner No.2, who is having a wife and son, would also loose the government job. The fact that family members of respondent No.10 including herself were threatening the petitioners was duly intimated to the Mahila Thana, Bilaspur on 14.2.2003, however, due to apprehension of compromise the petitioner did not want any legal action against the respondent No.10 or her family members. However, respondent No.10 with the help of her family members lodged a false case against the petitioners in the Mahila Thana, Bilaspur under Section 498A, 506-B read with Section 34 of the IPC by way of complaint dated 16.4.2003 & 19.4.2003, as a result of which the petitioner No.1 was arrested on 15.8.2003 and was remained in jail for about twelve days due to which he has lost his social image as teacher and his career ended up within no time. Further case of the petitioners is that whenever, petitioner No.1 tried to bring back respondent No.10 to his residence she used to refuse him stating that she would not even meet him unless and until he caters to the demand of her family members that he must vacate his present residence and stay at their

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

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residence at Gandhi Nagar, Bilaspur and when the petitioner No.1 refused to the pressurize tactics of respondent No.10 to 13 a false case has been foisted upon the petitioners.

I have heard the learned counsel for the parties.

It is admitted position that after investigation the charge sheet has already been filed against the petitioners for commission of offence under Sections 498A, 506-B read with Section 34 of the IPC and same is pending trial before the Court of Judicial Magistrate First Class, Bilaspur. The grounds on which the power under Article 226/227 of the Constitution of India can be exercised to quash the criminal proceedings are;

(1) Where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused

(2) Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused

(3) Where there is an express legal bar engrafted in any of the provisions of Code of Criminal Procedure or the concerned Acts to the institution and continuance of the proceedings and where the Court is required to see whether prima-facie offence is made out against the accused by accepting the alleged facts in FIR in their

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

entirety. If prima-facie offence is disclosed then Court is not required to look into the veracity, reliability, sufficiency and adequate proof of the alleged facts. Meticulous scrutiny and disclosure of all the ingredients in the complaint is not necessary.

On the above principle, if we look into the facts of the case in hand, it is admitted position that respondent No.10 was married to Petitioner No.1 on 22.5.2002 and thereafter, they started residing peacefully. On 19.4.2003 a complaint (Annexure P-4) was lodged by respondent No.10 herein before the Station House Officer, Police Station Civil Lines, Bilaspur with the allegations that she was married to petitioner No.1 on 22.5.2002 and in the marriage her father gave dowry on the demand of her in-laws to the tune of Rs.1,30,000/- cash, 10 tolas gold, furniture worth Rs.80,000/- and other goods valuing Rs.60,000/-. After marriage her mother-in-law fell ill and she was admitted in Apollo Hospital, Bilaspur, upon which her husband used to ask her to bring money from her parents for the treatment of his mother. When she replied that on account of expenditure in their marriage financial condition of her father is not good and therefore, she was not able to meet the demand of her husband i.e. petitioner No.1 herein. On this petitioner No.1 & No.2 herein started misbehaving and torturing her mentally & physically. Petitioner No.1 started returning in night after consuming liquor and thereafter, he used to beat her and demand

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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	money. Petitioner No.1 used to take her whole salary by saying that at the time of marriage Rs.2,50,000/- cash and goods valuing Rs.2,00,000/- were demanded, but same were not meted with, therefore, she has to give her salary. Even she was forced to consume liquor and petitioner No.1 used to treat her cruelly on account of which her health started deteriorating. Upon which in the month of October, 2002 she informed her mother about the tortuous behaviour of her husband, after hearing this her mother started feeling pain in the chest upon which her brother came and took her to her parental home. On 17.12.2002 when she got her examined from Dr. Shikha Mitra, she was informed that she is pregnant, upon which the petitioner No.1 started pressurizing her to go for abortion, but even Dr. Mitra asked her husband not to pressurize her for abortion. On this her husband and brother-in-law forced her to take pills for abortion and when she refused to take the bills both of them started abusing her, pressurizing her to sign on divorce papers and started saying that if she will not go for abortion then she will be murdered. They have even snatched the mobile phone and asked her not to talk with the parents and also started keeping vigilance on her. On 14.4.2003 when she went to her in-laws house along with her parents and brother, her husband started scuffling with her parents and ousted her from the house. On receiving this complaint the police authorities registered a case and after investigation &	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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recording of evidence filed the charge sheet before the court below. During investigation the police recorded the evidence of respondent No.10 herself, father of respondent No.10 i.e. respondent No.11 herein and brother respondent No.10 i.e. respondent No.12 herein. In the evidence they have stated about the demand of dowry by the petitioners, ill treatment and cruelty meted with the petitioners.

At this stage, when believing the evidence of above persons charge sheet has already been filed by the police against the petitioners and in view of the above allegations made in the statements of these persons prima-facie allegations levelled in the complaint are established, the veracity and reliability of alleged facts cannot be looked into. It is not a case where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in entirety do not prima facie constitute any offence or make out a case against the said persons. Therefore, I am of the considered opinion that the petitioners have not been able to make out a case for quashing of charge sheet filed against them after investigation for commission of offence under Sections 498A, 506-B read with Section 34 of the IPC.

As far as the question of directing the police authorities for registering the case against the respondents concerned under the appropriate offence is concerned, as per averments made in Paragraph No.5.17 of the petition the petitioners have already filed a complaint

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

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—7—

against respondent Nos.10 to 13 for commission of offence under Section 110, 384, 452, 464, 468, 469, 471, 478, 500, 506B & 511 (3) of the IPC in the Court of Chief Judicial Magistrate, Bilaspur, who has vide order dated 19.7.2003 ordered for registration of the case and investigation and after investigation final report has been filed by the police authorities in that case. However, if the petitioners are feeling aggrieved by the said report then they may file a protest petition before the court concerned and take the further recourse of law as available to them under the Code of Criminal Procedure, but at this stage no direction can be issued for further investigation of the matter.

In view of foregoing reasons, I am of the opinion that the petition has no force, same is liable to be dismissed and accordingly, it is dismissed at the admission stage itself.

Sd/-
L.C.Bhadoo
Judge

SDE/S/2005 - 20,000